

[DRAFT]

CASE MANAGEMENT ORDER

Background

The Commission's regulations, specifically 10 C.F.R. § 2.1009(a)(2), require each party, potential party, and interested governmental participant to establish procedures to implement the requirements of 10 C.F.R. § 2.1003 to make available documentary material. As provided in 10 C.F.R. § 2.1012(b), a person may not be granted party status or status as an interested governmental participant absent substantial and timely compliance with those requirements.

In compliance with the PAPO Board's May 23, 2005 Order, the Department of Energy (DOE), the Staff of the Nuclear Regulatory Commission (NRC Staff), and the State of Nevada (State) coordinated a public meeting held on June 15, 2005 to discuss minimum acceptable standards of documentary material retention for this proceeding under 10 C.F.R. § 2.1009. Comments at that June 15 public meeting indicate that many potential parties and interested governmental participants are seemingly either unaware or uncertain about the procedures needed to comply with 10 C.F.R. § 2.1003 and § 2.1009. **[POSSIBLE INSERTION SHOULD THE PARTIES FAIL TO ACHIEVE CONSENSUS OR SHOULD THEIR PROPOSAL GENERAL DISSENTING PUBLIC COMMENTS:**

] In addition, the parties failed to reach consensus on some minimum procedures for compliance with § 2.1009.] In light of the public comments **[POSSIBLE INSERTION:** and competing proposals], the Board has determined that a case management order would aid in clarifying some minimum acceptable standards of documentary material identification and retention to demonstrate substantial and timely compliance with the Commission's regulations. The Board is also concerned that unnecessary burden and expense could result if parties, potential parties and interested governmental

participants adopt unnecessarily burdensome procedures. In light of those considerations, the Board orders the following procedures that parties, potential parties, and interested governmental participants (collectively, participants) shall implement to satisfy 10 C.F.R. § 1009.

Requirements

1. The requirements of this Order apply to all forms of documents including electronic files and emails. A document is to be considered documentary material if any portion of the document, including its attachments, qualifies as documentary material.

2. The requirements of this Order apply to all documents in a participant's possession regardless of its authorship or source. This includes not only documents given to a participant by a contractor or consultant, but documents authored by another participant or other third person. A participant cannot assume that a document prepared by or given to another participant will be made available on the Licensing Support Network (LSN) by that other participant or anyone else.

3. A participant who intends merely to rely on or cite another participant's documents in support of its positions still must have procedures to identify and make available documents that qualify under the other criteria of documentary material, *i.e.*, information that does not support the participant's position and certain reports and studies.

4. All officers, employees and other personnel of a participant who reasonably might generate or possess documents that qualify as documentary material shall be canvassed to identify all documentary material they possess or otherwise comes into in their possession or custody. All such officers, employees, and other personnel must have a continuing obligation to identify to the participant's official designated under 10 C.F.R. § 2.1009(a)(1), or that official's

delegate, all additional documentary material that they generate or receive or that otherwise comes into their possession or custody.

5. All warehouses and other storage facilities that a participant maintains and that reasonably could contain documents that qualify as documentary material shall be canvassed to identify all documentary material in those locations (unless the participant had other, contemporaneous procedures to identify and capture those documents that qualify as documentary material before they were sent to such locations).

6. All back-up email tapes in a participant's possession that reasonably could contain emails that qualify as documentary material shall be canvassed to identify all emails, and their attachments, that qualify as documentary material (unless the participant had other, contemporaneous procedures to identify and capture emails that qualify as documentary material when the emails were sent or received).

7. Absent procedures to identify and preserve future emails that qualify as documentary material when the emails are sent or received, a participant shall make adequate back-up tapes of its email systems and review the emails on those tapes for those that qualify as documentary material.

8. A participant shall require each of its contractors, consultants and testifying experts who reasonably might generate or obtain documentary material, including emails, in the course of their work for the participant to submit to the participant such documents generated or obtained in the course of their work for the participant to which the participant has a contractual right of access. A participant is not the guarantor of its contractors', consultants' and testifying experts' compliance with this obligation.

9. Unless a participant makes available at the time of its certification under 10 C.F.R. § 2.1003 all documents that reasonably may qualify as documentary material in light of reasonably anticipated contentions, a participant shall implement reasonable procedures to preserve all documents that might qualify as documentary material during the pendency of this proceeding, as well as reasonable procedures to review periodically those documents to identify those that qualify as documentary material in light of admitted contentions.

10. A participant shall implement reasonable procedures to preserve documents in its possession that may be pertinent to derivative discovery under 10 C.F.R. §§ 2.1018 and 2.1019. This includes documents in the possession or custody of its officers, employees and other personnel. This also includes documents in the possession or custody of its contractors, consultants and testifying experts for work done for the participant.

11. The training required by § 2.1009(a)(3) shall include training and guidance on the requirements of this Order.

12. The requirements of this Order are effective immediately. All entities and other persons, including individuals, contemplating participation in this proceeding as a party, potential party or interested governmental participant shall immediately implement the procedures prescribed in this Order.

13. A participant's certification under 10 C.F.R. § 2.1003(a) shall include an attestation that it has complied with the requirements of this Order.

14. This Order does not address the consequences, if any, of a participants' failure to implement adequate document identification and retention procedures prior to entry of this Order.

15. This Order does not supersede, preempt or otherwise diminish any obligation that a participant may have under any federal, state, local or other law, order, statute, regulation or order.

Please direct any comments to Kelly Faglioni by email at kfaglioni@hunton.com or by phone at (804) 788-8200 by noon eastern time on July 5, 2005